City of Lafayette Staff Report

For:	City Council Planning Commission Design Review Commission
By:	Niroop K. Srivatsa
Date Written:	May 18, 2009
Meeting Date:	May 26, 2009
Subject:	**Town Center Phase III: Proposed residential condominium project**

❖ Purpose

To consider and provide preliminary comments on a proposal from KB Home, Inc. and Lafayette Residential Partners to construct an 89 unit residential condominium project on a 1.47 acre vacant parcel known as Phase III in the Town Center development. This joint meeting is called for in the Settlement Agreement ("SA") that was approved in February 2008. Based on the comments made at this meeting, the applicant will decide whether or not to proceed with filing a formal development application.

❖ Town Center Phase III History

In 1998, the Lafayette City Council entered into a development agreement ("DA") with Lafayette Town Center Associates to redevelop a 4.84-acre property in the downtown core. As part of the agreement, the Council rezoned the property to P1 (planned development) and approved a mixed use development consisting of three phases – commercial, multi family residential and office. Phases I and II were built and occupied shortly thereafter. The third and final phase, approved for a 26,000 square foot office building, is as yet undeveloped.

In 2003, the applicant, now called Lafayette Residential Partners, LLC, ("LRP") submitted an application for a 73-unit apartment project in place of the approved office building in Phase III. While the City indicated that it supported the change in use from office to multi-family residential, the proposed application was considered by the Planning Commission and found to be inconsistent with the BART Block Specific Plan. That application was withdrawn.

In 2005, the property owner entered into a contract to sell Phase III to KB Home South Bay, Inc. ("KB"). KB Home's proposal contained 76-unit luxury condominium units, five live/work units, a 3,000 square-foot restaurant and at least two levels of underground parking. Schematics of this proposal designed by the architectural firm Heller Manus were presented to the City Council, Planning Commission and Design Review Commission at a joint meeting in 2005. However, in early 2006, KB Home terminated its contract to purchase the property.

In May 2006, the applicant and the City entered into a Settlement Agreement to resolve a dispute related to the Development Agreement, which required the City to amend the Development Agreement to include a luxury condominium component with affordable housing as further defined in the Settlement Agreement. The Settlement Agreement referenced the 2005 Heller Manus plans which, as previously stated, contained a restaurant and live/work units.

Item 5

In January 2007, the City engaged the services of Libby Seifel, a certified planner with experience in real estate economics and urban development to assist the City and property owners in understanding the trade offs between an office project and a residential project. Ms Seifel stated that if the parties wanted a residential use on the subject site, the standards and criteria set forth in the Settlement Agreement, particularly the requirements for a restaurant and resultant parking, made such a use cost prohibitive. She recommended that the parties work together to come up with a way to make a residential project a reality. Based on the consultant's analysis, the City Council directed then Mayor Anderson and Councilmember Federighi to meet with Rick Dishnica and Ivan Glover, owners of Phase III to explore ways to achieve a residential option for Phase III.

In February 2008, after several months of negotiations, the Council subcommittee submitted amendments to the Settlement Agreement for the City Council's consideration and approval. The document was approved by the City Council on February 25, 2008 and contains details of the residential project alternative such as the design, uses, affordable housing requirements, fees and the application review process. These terms of the amended Settlement Agreement were also encapsulated in the Fourth Amendment to the Development Agreement which was approved by the City Council in April 2008.

On a separate but related matter, in March 2007, the applicant (LRP) received approval of the final development plans for the office building from the Planning Commission. An application for a building permit to construct the office building was filed and approved subject to payment of City fees.

In March 2009, representatives of LRP and KB met with staff to submit plans for an 89 unit residential condominium project. Staff reviewed the plans against the terms of the SA and found that they were inconsistent in terms of parking, massing and setbacks. KB provided alternatives to the plans to address some of staff's concerns and they are attached to the 2009 plan set. In accordance with the terms of the Settlement Agreement, a joint meeting of the City Council, Planning Commission and Design Review Commission was scheduled for May 26th.

❖ The Settlement and Development Agreements

Before providing you with a description and an analysis of the proposed project, staff presents the following highlights of the DA and SA. Understanding the terms in these two documents is important as they set the parameters for review of the project. Copies of the two documents are attached.

❖ *Fourth Amendment to the Development Agreement*

1. Term and purpose of the Development Agreement

The fourth amendment to the DA extends the term of the agreement to May 2010. The Development Agreement freezes the City's rules and regulations as of the effective date of its approval which is April 27, 1998. This means that the project is governed by the previous General Plan which did not establish a height limit for development in the Downtown. The project is, however, governed by the BART Block Specific Plan which establishes a three story maximum limit.

2. Land Use

The Agreement allows for a residential alternative to the office use approved for Phase III. The attributes of a residential alternative are described in this report.

3. BART Block Specific Plan

The Developer is required to file an application for amendment of the BART Block Specific Plan if potential preliminary approval is indicated at the joint meeting of the City Council, Planning Commission and Design Review Commission. The amendment to the Specific Plan shall be with respect to permissible building height.

4. Attributes of a Residential Project

a. Uses, site plan and elevations: The Developer is to retain Heller Manus Architects to produce conceptual plans for the residential project which will retain the general footprint, general elevations, general site plan and general plaza dimensions of the earlier proposal. (Recall that Heller Manus prepared the conceptual studies of the Phase III project site for KB Home in 2005.) However, the City has agreed to the following changes to the 2005 Heller Manus plans:

1. The requirement for a restaurant is removed provided that an acceptable open space or quasi public interior space substitute is proposed. The Developer shall apply for a Land Use Permit to define the specific acceptable open space substitute or public or quasi public interior space substitute for the prior required restaurant use.

2. There is no longer a requirement for live/work units, provided that an acceptable alternative is proposed that enlivens the southern edge of the development that meets City aesthetic requirements.

3. The Developer may provide a feasible design for a naturally ventilated parking garage that meets City aesthetic requirements and that responds to the need to enliven the southern edge of the development. However, nothing shall prevent the Developer from constructing an underground garage which is called for in the Heller Manus plans.

b. Height: In no case shall the height of the buildings exceed the height of the existing Residential and Retail Components. (For purposes of this paragraph, the height limitation imposed by the existing Phase II project shall be determined by project height above sea level rather than existing grade.)

c. Parking: Parking requirements shall not exceed two spaces per unit and shall be otherwise limited to one space per bedroom. Parking requirements may be satisfied by tandem spaces and/or "lifts".

d. Exterior finishes: Exterior finishes and materials used on the buildings, the plaza, and the pedestrian pathway and the proposed landscaping shall be of the highest quality, shall respect and reflect the creek side setting of the project, and be commensurate with the single family and environmentally-sensitive quality of residential buildings in the City. The City will require the extensive use of architectural features involving a variety of building materials including stone, brick, minimal use of smooth trowelled stucco, and wood for the exterior of the buildings. Other materials and finishes that are consistent with a high quality residential project may be offered by Developer as alternatives. Approval of such materials is at the discretion of the City.

5. Fees

The Developer will pay the following specific fees:

a. A public art fee consistent with the City's public art ordinance.

b. A contribution of $100,000 for off-site improvements earmarked for the BART pathway/project intersection.

c. A contribution of $50,000 for a traffic signal at the intersection of Dewing and Mt. Diablo Blvd.

The City may consider fees or exactions in addition to those that are designed to mitigate an environmental impact, as determined by the CEQA process.

6. Affordable Housing

The Developer will be required to provide affordable units equal to 15% of the total number of units. The City will provide credit for the excess very low-income housing units already in place at the Town Center apartments, if the affordable housing is provided on site. If the units are provided off site, no credit will be given and the Developer will comply with the Redevelopment Agency's affordable housing requirements.

- ***2008 Settlement Agreement***

The terms listed above are also found in the Settlement Agreement. In addition, the SA contains the following terms:

1. What the revised Heller Manus plans must accomplish:

The SA states that the Heller-Manus revised work product prepared for the LRP residential project alternative shall:

1. Retain the general footprint, general elevations, general site plan and general plaza dimensions of the earlier proposal;

2. Create a housing development that is economically viable from the standpoint of LRP; and

3. Provide a feasible design for a naturally ventilated parking garage that meets City aesthetic requirements and that responds to the requirement to enliven the southern edge of the development all with access to or from Dewing/Mt. Diablo Blvd. Nothing herein contained shall be deemed to prohibit LRP from substituting an underground parking garage structure in the place and instead of a proposed naturally ventilated parking garage as described herein above.

3. The Review Process

The Settlement Agreement stipulates a process for the review of a residential project on this site. It calls for an initial joint meeting of the Council, Planning Commission and Design Review Commission wherein LRP will receive preliminary comments regarding the potential preliminary approval or disapproval of the project. Based on the feedback received, LRP may file an application with the City and the application will be reviewed by the Design Review and Planning Commissions before final action is taken by the City Council. The agreement establishes deadlines by which each of these bodies must act on the application. The following language is from the Settlement Agreement on the review process:

> As soon as such Heller-Manus plans are available and have been delivered to Lafayette, a joint meeting of the City Council, Planning Commission, and Design Review Commission shall be scheduled. The said joint meeting shall occur within 30 days of delivery of all plans and submittals required by the City. The plans shall be schematic and may include cut sheets to provide information regarding architectural details. The plans shall include elevations, site plan, a conceptual landscape plan, parking and circulation, proposed lighting, paving, furniture, art, colors and a materials board related to the building. At its joint workshop meeting, Lafayette shall make preliminary comments regarding the potential preliminary approval or disapproval of the Project utilizing such procedures for recording comments of each body. (Project Preliminary Comments).
>
> If the Project Preliminary Comments indicate potential approval of the project, then Lafayette staff will produce submittal requirements for consideration by the Design Review Commission (DRC), Planning Commission and City Council. Submittal requirement shall include all CEQA compliance requirements; provided, however, the

prior EIR Studies and Addenda shall be considered (including those related to an earlier proposed apartment project for the Phase III Site). Otherwise, submittal requirements shall be limited to matters legally required for project consideration and directly responsive to comments from Council Members and Commissioners.

Within 30 days of the date on which the LRP Application shall be deemed to have been complete and the appropriate CEQA analysis shall have been completed, the DRC shall consider the plans from the joint meeting and Project submittal requirement at a hearing. The scope of DRC review shall be to recommend approval, conditional approval, or rejection of the plans and submittals furnished by LRP. The DRC action shall be completed within 45 days of the first DRC meeting on the Project unless LRP fails to provide any information or anything else necessary to act on the Application, including anything necessary for CEQA compliance.

The DRC's recommendation shall be forwarded to the Planning Commission as soon as possible, but no later than 30 days following DRC action. The Planning Commission shall take action on the LRP Application within 45 days of the first Planning Commission meeting on the Project, unless LRP fails to provide any information or anything else necessary to act on the application, including anything necessary for CEQA compliance.

The Planning Commission's recommendation shall be forwarded to the City Council as soon as possible. The City Council's action must be completed within 45 days of the first City Council meeting on the Project unless LRP fails to provide any information or anything else necessary to act on the application, including anything necessary for CEQA compliance. Such review shall include a CEQA determination and action on the Tentative Subdivision Map.

4. What Preliminary Project Approval means:

The agreement states that potential preliminary approval may include the following aspects/attributes of a residential project alternative: Site plan including public spaces, uses, parking structure/solution, height, mass, and number of units.

❖ **2009 Project Description**

KB Home's 2009 plan set contains the initial submittal on pages titled "Option 10" and revised sheets titled "Option 10A" which were prepared after staff's initial assessment of the project. Option 10 contains 89 studio, 1-, 2- and 3-bedroom units. Option 10 A contains 87 units. The building is C-shaped and overlooks a landscaped courtyard that is adjacent to the BART pathway. Parking is provided in two levels – podium and basement. The building varies in height from four to five stories. The primary access to the garage will be from Dewing Avenue and the entrance to the garage is located behind the Pet Food Express store. A two story entrance lobby anchors the southern façade.

The height of the building measured from average grade to peak of roof is as follows:

- ❖ Southern elevation: 62 feet
- ❖ Eastern elevation: 57 feet for south leg of building and 67 feet for north leg of building
- ❖ Northern elevation: 64 feet
- ❖ Western elevation: 67 feet

The landscaped courtyard is divided into private and public areas. The public "amphitheatre" is accessed from the BART pathway. The plans also show an approximately 2,500 SF community plaza/sculpture park at the south east corner of the site and a covered arcade connecting the lobby to this space

❖ Analysis of 2009 Project Plans

1. Consistency with Settlement Agreement

In the attached table, staff compares the 2009 plans with the 2005 Heller Manus plans. As stated earlier, KB Home has provided revisions to its original submission to address some of staff's concerns. The revisions are (1) satisfying the SA's parking requirement, (2) stepping back the fifth floor in the north leg of the building away from the BART pathway, (3) cladding the majority of the buildings with siding in place of stucco and (4) replacing the community meeting room with an outdoor plaza and sculpture area. Staff appreciates KB's efforts to address our concerns about the project's consistency with the Settlement Agreement. However, as the attached table and marked up plans indicate, we cannot as yet find the project to be consistent with the 2005 Heller Manus plans. The items in bold in the table highlight the elements of the 2009 plan that we find to be inconsistent with the 2005 plans that are contained in the Settlement Agreement.

2. BART Block Specific Plan

As stated earlier, the Developer will be required to file an application for amendment of the BART Block Specific Plan if potential preliminary approval is indicated at the joint meeting. The amendment of the Specific Plan shall be with respect to permissible building height. A copy of the Specific Plan is attached.

The BART Block Specific Plan contains the following language relating to building height. Staff comments are added in parenthesis at the end of each paragraph.

> The presentation of building height and the architectural treatment of buildings within the retail core area along the edge of Mt. Diablo Blvd. should be of small scale village character. Buildings near the street side walk and for a reasonable distance into the block should be limited to two stories so that the prevailing view from the street is of two story facades and roof areas. This specific plan includes the Building Height Relationship diagram attached and labeled Exhibit B. *(Does not apply. Site is located behind the retail center which fronts Mt. Diablo Blvd.)*
>
> Variations in height are desired, monotonous sameness of height is not acceptable. *(The building varies in height, with the upper floor being stepped back away from the BART pathway.)*
>
> Visibility of the ridgeline and hills south of the downtown should be maintained as viewed from Highway 24. View of the ridgeline and hills should be retained from the southern entrance to the BART station and along the creek pedestrian corridor. *(Views of the hills are currently filtered by existing trees adjacent to the BART station. The building will block the majority of views of the hills when viewed from the southern entrance to the BART station. This would also be the case if the approved three story office building were built. Very limited views of the hills will be seen from the BART pathway. Applicant will have to seek an amendment to this section)*
>
> A pedestrian ambiance of openness, both vertically and horizontally, should be preserved along the creek pedestrian corridor. Low buildings with gracious and varied setbacks including further recessed upper floors could provide opportunities for dining or other casual and informal activities. *(The C shaped form of the building creates a large landscaped courtyard in the middle of the site adjacent to the BART pathway and provides a sense of openness to the pedestrian using the pathway. The upper floor of the building is set back from the BART pathway. Buildings adjacent to the pathway are not "low" but four stories tall. Applicant will have to seek an amendment to this section.)*
>
> Remainder of the block; subject to view, solar access requirements and the desire for height variations. The 3 story height limit will apply. Some 3 story buildings, higher than 35 feet, of small bulk may be approved in areas where the sense of height is not present or the background or topographic circumstances mitigate the sense of height. Greater

height shall be considered a privilege and should be compensated for by provision of greater open space and provision for pedestrian oriented amenities. *(The building is four and five stories tall. Applicant will have to seek an amendment to this section.)*

❖ Importance of the Joint Meeting

This pre-application joint meeting is very important to both the applicant and the City. It is important to the City because the Settlement and Development Agreements require that the City Council, Planning Commission and Design Review Commission *"provide preliminary comments regarding the potential preliminary approval or disapproval of the Project"* and that *"future submittal requirements shall be limited to matters legally required for project consideration and directly responsive to comments from Council Members and Commissioners"* made at the joint meeting. It is important to the applicant because the comments made at this meeting will provide an indication of the City's support of the project (or lack thereof) and will determine whether or not to proceed with filing a formal application for development. Staff encourages the Councilmembers and Commissioners to be frank in their assessment of the project next Tuesday evening. If there are specific aspects of the project that you cannot support unless revised, please raise them at the meeting. If you have fundamental concerns that cannot be mitigated through project revisions, please discuss them and explain why you have those concerns. Conversely, if you like the project, please explain your reasons for supporting it.

❖ Staff Comments

Staff supports the construction of a multi family residential project at this location. The site is adjacent to BART, within walking distance to stores, parks and services. It is, in staff's opinion, an ideal site for higher density housing. The buildings, while tall, are set against the backdrop of the BART station and the elevated freeway. Staff also supports the project because it provides affordable housing units, public open space, and an improved pedestrian linkage to the BART station. However, as the attached table and marked up plans indicate, we cannot as yet find the project to be consistent with the Settlement Agreement. This is a project of significant size and scale and more changes are needed to reduce its visual impacts, ensure safe circulation and improve its exterior aesthetic. Therefore staff cannot recommend approval at this time.

❖ Recommendation

Provide direction to KB Home and Lafayette Residential Partners.

Attachments

1. Correspondence from KB Home, Inc.
2. Staff analysis (table and plans)
3. Preliminary comments from City's traffic consultant and transportation planner
4. Fourth Amendment to the Development Agreement
5. Amended and Restated Settlement Agreement
6. BART Block Specific Plan
7. 2009 plan set

8. 2005 plan set

No.	Item	What Settlement Agreement (SA) Says	What KB Home's plans show	Staff Comments
1	Use	The City and Developer agree that an alternative to the Office Component may include a residential project	A multi family residential project	Consistent with SA
2	Architect	Developer shall retain Heller-Manus to produce plans acceptable to it intended to create an economically viable development project	Plans designed by Heller Manus	Consistent with SA
3	Project attributes	The general foot print, general elevations, general site plan and general plaza dimensions of the original Heller-Manus work product shall be retained	**2005 Heller Manus plans show a greater landscaped separation between the building and the BART pathway on the north leg of the building. In the 2009 plans, the building (and residential units) are very close to the pathway. (see 1st level plans)**	**Locating the building so close to the BART pathway will create a walled effect and will impact the heritage oak tree on the east side of the pathway. The building should be moved back so that it is outside the drip line of the tree.**
			The upper floor of the building in the 2005 plans is stepped back to a greater extent than the 2009 plans. This reduces the mass of the buildings (see 5th level plans)	In Option 10A, the 5th floor is stepped back in the north arm of the building away from the BART pathway. Staff supports this change.
			The 2005 plans show a 20' wide building break in the southern elevation. The break in the building line provides visual relief and creates an opening to the central courtyard. The north/south leg of the building is also set back 60' from the southern building edge. This is not provided in the 2009 plans (see 1st and 2nd level plans)	**Without a break in the building, the southern elevation, the 250 foot long southern façade appears large and imposing. The north/south leg of the building has a minimal set back from the southern building edge.**

No.	Item	What Settlement Agreement (SA) Says	What KB Home's plans show	Staff Comments
			In the 2005 plans, the western side of the building has a series of step backs which provides interest and relief. This is not the case in the 2009 plans (see site plans)	**The western elevation in not well articulated and needs more attention.**
4	Substitute for restaurant	An acceptable open space substitute (e.g., enlarged plaza, children's fountain/playground/spray ground, sculpture park) or, alternatively, a public or quasi-public interior space substitute (e.g., art gallery, chamber of commerce office, non-profit foundation)	Plans show an approximately 2,500 SF community plaza/sculpture park in place of the restaurant and a covered arcade leading from the lobby to this space.	Consistent with SA
5	Substitute for live/work spaces	There shall be no requirement for live/work units, provided that an acceptable alternative is proposed that enlivens the southern edge of the development that meets City aesthetic requirements.	Plans show a main lobby, an approximately 2,500 SF community plaza/sculpture park in place of the restaurant and a covered arcade leading from the lobby to this space.	Consistent with SA
6	Number of units	The 2005 Heller Manus plans had 76 units	89 units	This is a17% increase in the number of units. Impacts of this increase will need to be assessed in the environmental review.
7	Building finishes	Exterior finishes and materials used on the buildings, the plaza, and the pedestrian pathway and the proposed landscaping shall be of the highest quality, shall respect and reflect the creek side	Stucco is the predominant exterior material used. SA allows "minimal use of smooth trowelled stucco"	Option 10A replaces stucco with siding. It is difficult to assess the impacts of this change without a detailed review of all the exterior features of the project. The SA requires that all exterior features

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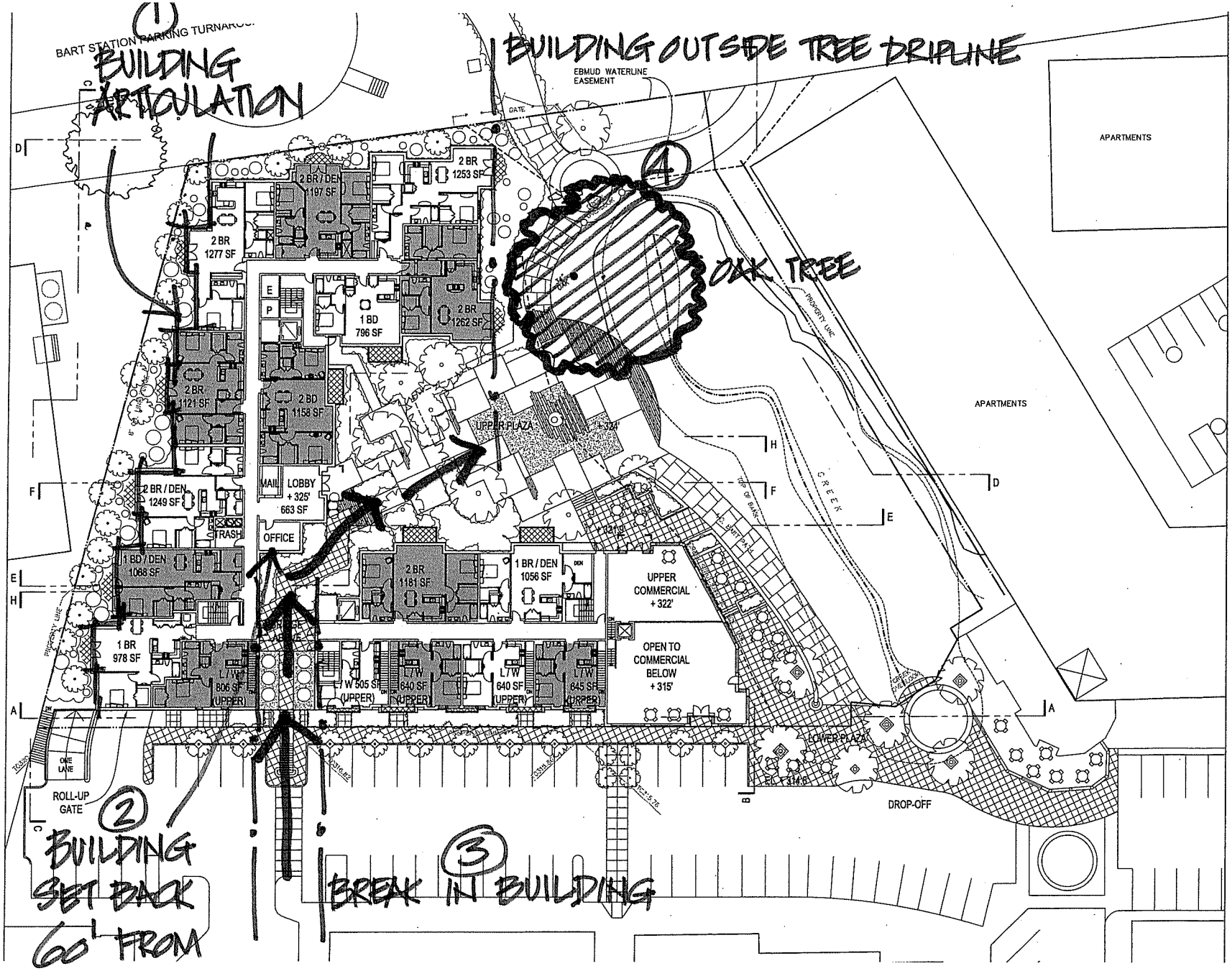
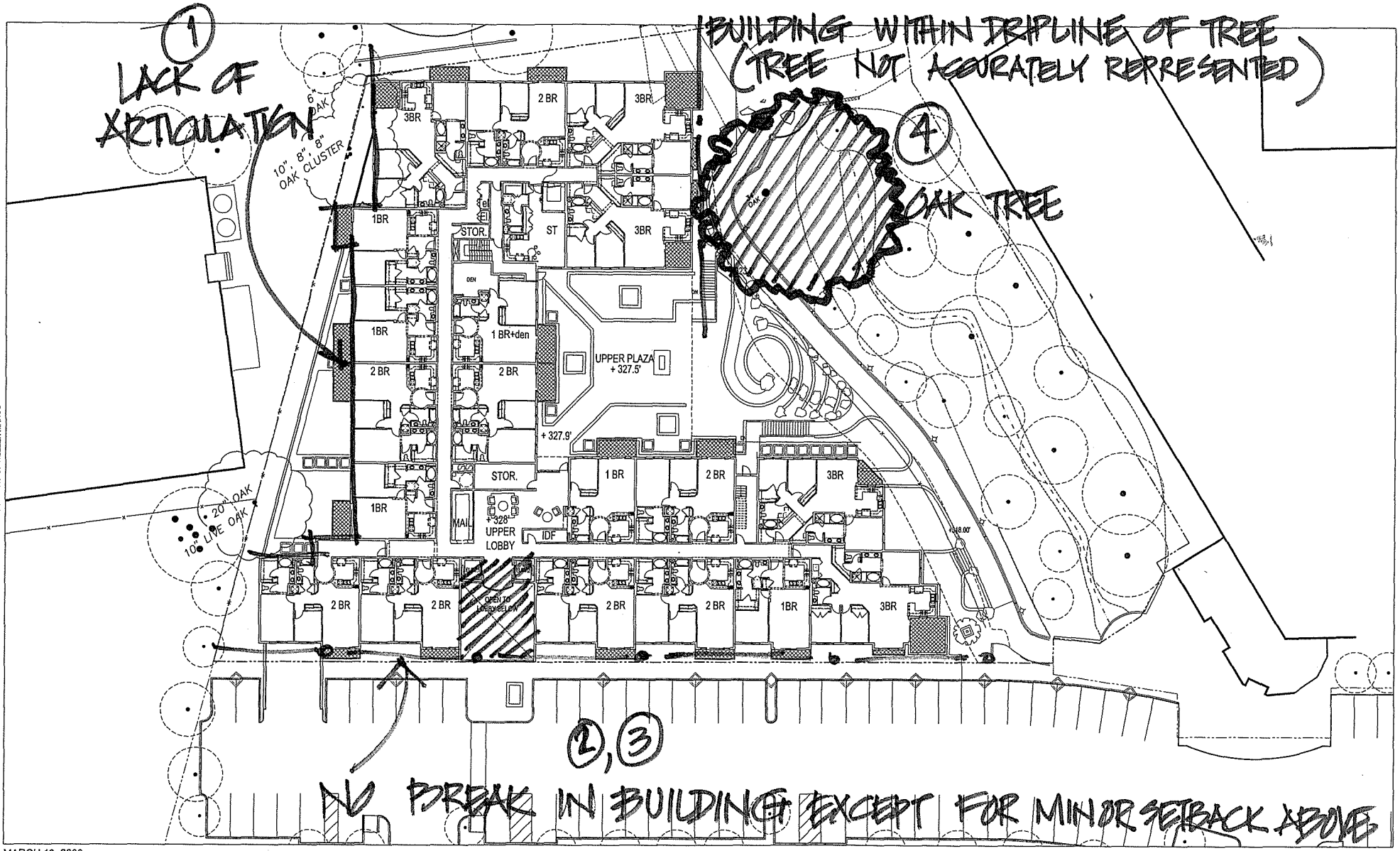
		setting of the project, and be commensurate with the single family and environmentally-sensitive quality of residential buildings in Lafayette. The City will require the extensive use of architectural features involving a variety of building materials including stone, brick, minimal use of smooth trowelled stucco, and wood for the exterior of the buildings. Other materials and finishes that are consistent with a high quality residential project may be offered by LRP as alternatives. Approval of such materials is at the discretion of the City.		including landscaping must be "of the highest quality." This item will require additional scrutiny by the Design Review Commission.
8	Height	In no case shall the height of the buildings exceed the height of the existing Town Center buildings. The height limitation imposed by the existing Phase II project shall be determined by project height above sea level rather than existing grade.	The elevation of the peak of the roof of the tallest building in Phase II is +393.7' above sea level. The buildings in Phase III are lower than this height. Building heights in Phase III measured from average grade to peak of roof are as follows: Southern elevation: 62 feet Eastern elevation: 57 feet for south building and 67 feet for north building Northern elevation: 64 feet Western elevation: 67 feet	Consistent with SA
9	Parking and parking	Parking requirements shall not	Insufficient parking provided.	**Option 10A provides the requisite**

No.	Item	What Settlement Agreement (SA) Says	What KB Home's plans show	Staff Comments
	layout/circulation	exceed two spaces per unit and shall be otherwise limited to one space per bedroom. Parking requirements may be satisfied by tandem spaces and/or "lifts"; provided, however, such alternatives must be reviewed and approved by a qualified traffic engineer and the City's engineer to ensure feasibility.		**parking. Parking (width, total number, handicapped spaces, etc.) and circulation (access to garage, aisles, etc.) must be approved by the City Engineer and traffic consultant.**
10	Parking owed to Town Center retail	LRP shall provide parking as set forth above and shall also include replacement parking for any spaces lost in the retail parking lot in addition to required spaces pursuant to prior agreements (e.g. CC&Rs, Development Agreement etc).	8 spaces are provided for commercial use.	Consistent with SA



LEVEL 1
2005 PLANS

2005 PLANS



IN PART WITHOUT THE PRIOR WRITTEN CONSENT OF HELLER MANUS

MARCH 13, 2009
1/32" = 1'-0"
0 32' 64'

TOWN CENTER PHASE III

LOBBY

OPTION 10
1ST LEVEL PLAN

LAFAYETTE RESIDENTIAL PARTNERS, LLC

LAFAYETTE, CA

HELLER MANUS ARCHITECTS HM

2009 PLANS

City of Lafayette Memorandum

To:	Niroop Srivatsa, Planning and Building Services Manager
From:	Tony Coe, Engineering Services Manager
CC:	Leah C. Greenblat, Transportation Planner Chuck DeLeuw, Consulting Traffic Engineer
Date:	May 6, 2009
Subject:	Town Center Phase III Preliminary Review

As requested I have reviewed, with my staff and consultant, the application referral for the proposed Town Center Phase III. The applicant proposes two development options. Option 10 has 89 units and 154 residential parking stalls. Option 10A has 87 units and 146 residential parking stalls. We have the following preliminary comments:

1. The Dewing Ave. approach from Mt. Diablo Blvd., its intersection with the east-west drive aisle, the entrance to the garage and the drop off area require further development. We have concerns regarding the

    a. Clarity of the vehicle rights-of-ways,

    b. Adequacy of the turning radii to clear parking spaces,

    c. Provision of ADA access and pedestrian crosswalks, including any special paving and striping to delineate such,

    d. Adequacy of garage entrance ramp width, and

    e. Adequacy of the width of the drive aisle adjacent to the proposed drop-off area.

2. It is difficult to evaluate the submittal because basic dimensions are not provided for parking aisle, ramp widths, typical space sizes and walkway widths. The plans should show existing conditions and controls for traffic circulation, including signs, stripes, and special pavement delineations, and how they are proposed to be changed by this project.

3. A variety of parking garage issues need further development:

a. Provide calculation and tabulation to show compliance with codes and requirements for the various types of parking, including handicapped parking spaces. Reconcile the quantities in the table provided separately with the actual number of parking spaces shown.

b. The door from the elevators opens directly into the drive aisle on the P2 Level. This creates a conflict with vehicles backing up from the nearby parking spaces and the travel lane. Exiting pedestrians need a landing space outside of the vehicle space to view traffic conditions and thereby avoid conflict.

c. Explain how the trash room is accessed and serviced.

d. The pedestrian path of travel for entering and exiting the commercial parking garage is not obvious. Provide way-finding signage and/or provide a pedestrian route along the ramp as this appears to be the most obvious route for pedestrians.

e. We noted a number of unused areas in the parking garage. Consider designating unused "left-over" space for moped, motorcycle and bike parking and storage.

f. Extend the access walkway in front of the residential handicapped spaces eastward to serve the van driver since they could be handicapped as well.

4. Bike Parking issues:

a. Long-term bike parking for residents should be provided in the secure residential parking area.

b. Short-term bike parking for the project's guests should be provided near and within clear eye-sight visibility of the building's main entrance.

5. The BART pathway issues:

a. The path is not dimensioned. It appears to be only 8 ft. wide which does not meet the standards for a two-way, bikeway path with pedestrians.

b. The north end of the pathway is shown on the Open Space and Circulation Plan as connecting to the BART parking lot, but not on the Site Plans. The pathway should be extended to link to the existing stairs and the end of cul-de-sac serving the BART Station parking lot.

c. The ability for residents of the project to enter and exit the project on the north-east side (possibly via the proposed plaza and/or stairways) should

be required to provide a convenient, shorter walking route for pedestrians to and from the BART path, BART station, and the future EBMUD Aqueduct pathway.

d. The southern stairway near the Community Gathering Space should be redesigned to connect to but not encroach on the BART pathway.

6. The Open Space and Circulation Plan depicts a pedestrian access route between the two retail buildings, crossing the east-west parking area and continuing north to the proposed development. This route conflicts with the existing parking layout. The design needs to resolve this conflict.

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To: Niroop Srivatsa
City of Lafayette, Planning Division
3675 Mt. Diablo Blvd. #210
Lafayette, Ca 94549

April 28, 2009

Subject: Lafayette Town Center Phase III, Joint Committee Submittal

Dear Niroop:

Please allow this letter to document the formal submittal date of the Lafayette Town Center Phase III plans for a residential project. With the receipt of these plans and the understanding in the Settlement Agreement dated February 25, 2008, a joint committee meeting comprised of the City Council, Planning Commission and the Design Review Commission is to be scheduled within 30 days. To the extent necessary to have key members of the City Council, the Commissions and the "Developers'" (KB Home and Lafayette Residential Partners, LLC) design team present, it may not be possible to schedule the meeting within the 30 days specified in the Settlement Agreement. In such an event, it would be expected that the City of Lafayette and the Developers work together to schedule the joint meeting within a reasonable amount of time.

This submittal is the product of over 16 people throughout the past six months at a cost of well over $200,000. The Developer spent extensive time and money to ensure two very important aspects of the Settlement Agreement; economic viability and general conformance with the 2005 Heller-Manus plans. Both Option 10 and 10A are a direct result of civil engineering survey, geotechnical investigations, nine previous architectural studies and thoughtful landscape design.

This project is important to the Developer, and as such the above efforts were notably outlined. It is also important to mention that throughout the plan development process the Developer and the design team met numerous times to make certain the spirit of the Settlement Agreement was reflected in the plans. There were fundamental guidelines of the Settlement Agreement that the plans were developed under:

1. Heller-Manus shall be retained to produce plans acceptable to the Developer
2. The following shall be retained in accordance with the 2005 Heller-Manus plans
    a. General footprint
    b. General elevations
    c. General site plan
    d. General plaza dimensions
3. Provide an acceptable and useful open space
4. Provide an urban frontage that enlivens the southern edge of the development
5. Exterior finishes of building, plaza and pathway:

6700 Koll Center Parkway, Suite 200 · Pleasanton, CA 94566
Phone (925) 750-1700 · Fax (925) 750-1800

a. Shall be of highest quality: stone, brick, minimal use of smooth trowelled stucco and wood
b. Shall respect and reflect the creek side setting
c. Shall be commensurate with single family and environmentally-sensitive quality of similar buildings in Lafayette.

6. Parking garage shall either be naturally ventilated or underground and shall not exceed two spaces per unit and shall otherwise be limited to one space per bedroom.

The submittal demonstrates conformance with the design criteria outlined above by providing a "U" shaped building that follows the contours of the site by stepping up from south to north and stepping down from west to east toward the creek. There are two levels of mechanically ventilated underground parking; a centrally located plaza; a pronounced main entry; an arcade and sculpture garden and an enlarged southern plaza.

Additionally, efforts were made to investigate the use of a steel structural system known as ConXtech, which substantially increases the quality of the building and reduces material waste that would otherwise be realized with wood-frame construction. The ConXtech system is very important to this project as it allows for light-weight concrete to be used on each floor which significantly reduces noise transmission between units. Similarly construction variances are reduced to within ¼ of an inch by the precise manufacturing of all structural components in the ConXtech facility. Lastly ConXtech solves the problem of material staging with the ability to construct the building as materials are delivered.

The 2009 plans are not an exact replica of the 2005 plans, nor did the Settlement Agreement intend them to be. They are in general conformance with the design criteria in the Settlement Agreement, they embody the spirit of the Settlement Agreement and most importantly they are economically viable.

It is respectfully requested that the joint committee meeting be scheduled.

For any questions please contact Jed Bennett at 925-750-1749.

Thank you,

Jed Bennett
Forward Planner
KB Home South Bay Inc.

6700 Koll Center Parkway, Suite 200 · Pleasanton, CA 94566
Phone (925) 750-1700 · Fax (925) 750-1800

Town Center Phase III

Lafayette, CA

Heller Manus Architects

April 20, 2009

OPTION 10

AREA SUMMARY

Level	Residential Unit PTP	Residential Unit NSF	Lobby, Core, Corr., Stairs, Stor., Trash GSF	Community Space GSF	Parking GSF	Total GSF
5	12,441	13,049	2,658			15,707
4	19,810	20,862	3,919			24,781
3	22,050	23,189	4,030			27,219
2	22,050	23,189	4,030			27,219
1	21,444	22,565	4,504			27,069
P1			2,440	2,560	29,879	34,879
P2			2,035		34,092	36,127
SubTotal	97,795	102,854	23,616	2,560	63,971	193,001

PARKING

Resid. Stall	Commercial	Bicycles
58	8	4
96		
154	**8**	**4**

UNIT SUMMARY

ST	1 BR	2 BR	3 BR	# Units	Level
1	2	5	3	11	5
1	3	11	3	18	4
1	4	10	5	20	3
1	4	10	5	20	2
1	6	8	5	20	1
					P1
					P2
5	19	44	21	**89**	

5.6%	21.3%	49.4%	23.6%	100.0%	*UNIT*
STUDIOS & 1 BR'S		*2 & 3 BEDROOMS*			*RATIOS*
27.0%		73.0%			

Residential GSF excl gar & history rm 126,470

Efficiency Net/Gross= 81.33%

Efficiency - PTP/ Gross = 77.33%

Site Area 63,822

Total FAR 3.02

Resid. FAR 1.98

Bldg Footprint 34,879

Open Space % 45.3%

(Minimum = 20%)

Residential Parking Required per S.A.

St&1br	24 x 1	24
2br&3br	65 x 2	130
Total		**154**

Town Center Phase III

Lafayette, CA

Heller Manus Architects

April 20, 2009

OPTION 10 ALTERNATE

AREA SUMMARY

Level	Residential Unit PTP	Residential Unit NSF	Lobby, Core, Corr., Stairs, Stor., Trash GSF	Community Space GSF	Parking GSF	Total GSF
5	9,845	10,327	2,650			12,977
4	19,810	20,862	3,919			24,781
3	22,050	23,189	4,030			27,219
2	22,050	23,189	4,030			27,219
1	21,444	22,565	4,504			27,069
P1			2,440		29,654	32,094
P2			2,035		33,558	35,593
SubTotal	95,199	100,132	23,608	0	63,212	186,952

PARKING

Resid. Stall	Commercial	Bicycles
57	8	4
89		
146	**8**	**4**

UNIT SUMMARY

ST	1 BR	2 BR	3 BR	# Units	Level
1	2	5	1	9	5
1	3	11	3	18	4
1	6	8	5	20	3
1	6	8	5	20	2
1	7	7	5	20	1
					P1
					P2
5	24	39	19	**87**	

5.7%	27.6%	44.8%	21.8%	100.0%	*UNIT*
STUDIOS & 1 BR'S		***2 & 3 BEDROOMS***			*RATIOS*
33.3%		66.7%			

Residential GSF excl gar & history rm 123,740

Efficiency Net/Gross= 80.92%

Efficiency - PTP/ Gross = 76.93%

2,560 Outdoor Community Space

Site Area	63,822
Total FAR	2.93
Resid. FAR	1.94
Bldg Footprint	32,094
Open Space %	49.7%
(Minimum = 20%)	

Residential Parking Required per S.A.

St&1br	29 x 1	29
2br&3br	58 x 2	116
Total		**145**

KB HOME RESPONSE TO STAFF'S INITIAL COMMENTS

No.	Item	What Settlement Agreement Says	What LRP and KB Home's plans show	Staff Comments	LRP and KB Home Comments
1	Use	The City and Developer agree that an alternative to the Office Component may include a residential project	A multi-family residential project	Consistent with SA	None
2	Architect	Developer shall retain Heller-Manus to produce plans acceptable to it, intended to create an economically viable development project	Plans designed by Heller-Manus	Consistent with SA	The SA lists two key components when Heller-Manus develops the residential plans: first the plans must be acceptable to it (the Developer); and second the plans must create an economically viable development project. LRP and KB Home have deemed the proposed plans acceptable and economically viable.
3	Project Attributes (Provisions for developing plans)	The general foot print, general elevations, general site plan and general plaza dimensions of the original Heller-Manus work product shall be retained	**General Footprint**: 2005 Heller-Manus plans show a greater landscaped separation between the building and the BART pathway on the northeast side of the site. In the 2009 plans, the building (and residential units) are very close to the pathway (see 1st level plans. **General Elevations: 1)** The upper floors of the buildings in the 2005 plan are stepped back to a greater extent than the 2009 plans. This reduces the mass of the buildings (see 4th and 5th level plans).	All these issues put together make the 2009 plans inconsistent with SA.	**General Footprint: 1)** Both the 2005 plans and the 2009 plans represent a "U" shaped building, with a central courtyard. Both plans step down from north to south and from west to east to conform with the existing contours and adjacent creek. The building may have moved or grown in some areas and moved or shrank in others. However, the general footprint is maintained. **2)** In the 2009 plans the footprint of the building does move closer to the BART path by 9 feet 8 inches. This was done to increase economic viability with the introduction of standard floor plans to include 3-bedroom units which did not exist in the 2005 plans. These floor plans have been tested and implemented in the Bay area market. Most importantly though, standard floor plans create building efficiencies which helps to reduce the cost, increase quality and increase economic viability. **General Elevations: 1)** The 2005 and 2009 plans have similar unit counts on each level. Admittedly there were a few more units on each level in the 2009 plans. However, during the production of the 2009 plans there was great care given to the southern elevation with respect to massing. As a result the 2009 plans steps the building down from north to south in an effort to reduce massing. Additionally a main, urban entry was introduced which significantly enhances the southern elevation.

No.	Item	What Settlement Agreement Says	What LRP and KB Home's plans show	Staff Comments	LRP and KB Home Comments
3 cntd.	Project Attributes (Prvisions for developing plans) cntd.		**2)** The 2005 plans show a 20' wide building separation along the southern elevation. The break in the building line provides visual relief. This is not provided in the 2009 plans (see 1st and 2nd level plans) **3)** In the 2005 plans, the western side of the building has a series of step backs that provides interest and relief. This is not the case in the 2009 plans (see site plans) **General Site Plan:** No staff comments **General Plaza Dimensions:** Plaza width (north/south) 2005 plans: 80'. Plaza width (north/south) 2009 plans: 65'. **Miscellaneous:** There are 5 more tandem parking spaces in the 2009 plan (see basement plans)		**2)** The 2009 plans have introduced a 27' wide lobby where the 20' separation existed in the 2005 plans. The addition of the main lobby provides a clearly identified, prominent, urban entrance. **3)** The 2009 plan has 4 step backs which breaks up any long, flat facades with the use of 4 sections of pronounced balconies and recesses. The general site plan has been maintained. **General Plaza Dimensions:** The 2005 plaza dimensions are approx. 4668 sqft. The 2009 plaza dimensions are approx. 3914 sqft. The difference from 2005 to 2009 is a plaza reduced by 17%. However, the western edge of the building was moved to the east, away from the property line to create a greater set back. Additionally a hardscape patio is now shown on the plans as a buffer between the building and the western PL. Tandem parking spaces are allowed in the SA, with no reference to a maximum number which could be used. This comment should not be considered when determining if the 2009 plans are generally consistent with the 2005 plans.
4	Substitute for restaurant	An acceptable open space substitute (e.g., enlarged plaza, children's fountain/playground/spray ground, sculpture park) or, alternatively, a quasi-public interior space substitute (e.g. art gallery, chamber of commerce office, non-profit foundation)	Plans show a 2,560 SF community gathering space accessed via a community gallery		Option 10 and Option 10A are to be considered for the alternate use.
5	Parking for substitute use	Use to meet City parking requirements	No parking provided. (The zoning ordinance requires meeting rooms/assembly halls to provide one space for each 40 sqft (net) of assembly and meeting areas which do not contain permanent seats. This results in a requirement of 51 parking spaces.)	Inconsistent with SA	Option 10 is proposed with an enclosed art gallery and gathering space. However, if additional parking requirements will be imposed, option 10A includes an arcade, sculpture garden and increased southern plaza. There would be no need for additional parking requirements in option 10A.

No.	Item	What Settlement Agreement Says	What LRP and KB Home's plans show	Staff Comments	LRP and KB Home Comments
6	Substitute for live/work spaces	There shall be no requirement for live/work units, provided that an acceptable alternative is proposed that enlivens the southern edge of the development that meets the City aesthetic requirements.	Plans show a main lobby, a 2560 SF community gathering space and a community gallery.	Consistent with SA	Option 10 and Option 10A are to be considered for the alternate use.
7	Number of units	The 2005 Heller-Manus plans had 76 units	89 units	Inconsistent with SA. This is a 17% increase in the number of units. What are the CEQA implications?	The SA does not specify a maximum number of units; said another way, it does not limit the number of units for the project. Furthermore the total number of units complies with the unit to density ratio for all of Lafayette Town Center, thus eliminating an CEQA implications.
8	Building finishes	Exterior finishes and materials used on the buildings, the plaza, and the pedestrian pathway and the proposed landscaping shall be of the highest quality, shall respect and reflect the creek side setting of the project, and be commensurate with the single family and environmentally-sensitive quality of residential buildings in Lafayette. The City will require the extensive use of architectural features involving a variety of building materials including stone, brick, minimal use of smooth troweled stucco, and wood for the exterior of the buildings. Other materials and finishes that are consistent with a high quality residential project may be offered by LRP as alternatives. Approval of such materials is at the discretion of the City.	Stucco is the predominant exterior material used. SA allows "minimal use of smooth troweled stucco."	Inconsistent with SA	Consistent with the 2005 plans, Option 10 proposed smooth stucco to be used as an exterior finish in conjunction with stone on the first floor, to include the main entry, and on the tower elements. As an alternative Option 10A proposes hardy plank siding, in conjunction with limited smooth stucco and stone applied in the same manner as Option 10.
9	Height	In no case shall the height of the buildings exceed the height of the existing Town Center buildings. The height limitation imposed by the existing Phase II project shall be determined by project height above sea level rather than existing grade.	Height does not exceed the height of the existing Town Center buildings	Consistent with SA	The Developer surveyed the actual height of the existing Town Center building to ensure the height of the building for Lafayette Town Center Phs. III would not exceed the height limitation.

No.	Item	What Settlement Agreement Says	What LRP and KB Home's plans show	Staff Comments	LRP and KB Home Comments
10	Parking	Parking requirements shall not exceed two spaces per unit and shall otherwise be limited to one space per bedroom. Parking requirements may be satisfied by tandem spaces and/or "lifts"; provided however, such alternatives must be reviewed and approved by a qualified traffic engineer and the City's engineer to ensure feasibility.	136 residential spaces provided. SA requires 154 spaces.	Inconsistent with SA	The Developer respectfully disagrees with Staff's interpretation of the SA with regard to what the SA requires. The SA establishes a maximum amount of parking the City may require by using language such "parking requirements shall not exceed..." and "...shall otherwise be limited to..." This language establishes a maximum amount of parking that could be required by the City, not a minimum amount of parking the must be provided by the Developer. Requiring the maximum parking that could be imposed would be inconsistent with the parking ratios outlined in the Lafayette Municipal Code which might be used to establish a parking minimum on a similar project in different area of Lafayette. Additionally the Developer would appeal to the City to consider the development a transit oriented project with it's proximity to the BART station. However, if in fact the City does require the maximum allowed in the SA, Option 10A provides parking solutions.
11	Parking owed to Town Center retail	LRP shall provide parking as set forth above and shall also include replacement parking for any spaces lost in the retail parking lot in addition to required spaces pursuant to prior agreements (e.g. CC&Rs, Development Agreement etc.)	8 spaces are provided for commercial use	Not sure how many spaces will be lost due to the configuration of the access ramp. Check the CC&Rs to see how many spaces are owed to the retail phase.	No spaces are lost due to the configuration of the access ramp. While the access ramp is in a different location than the current ramp to the BART overflow lot, the same number of parking spaces remain after the reconfiguration. All additional required spaces are provided in the 8 commercial spaces.
12	Scope of preliminary City review at Joint Meeting	Preliminary approval may include the following aspects/attributes of a residential project alternative: Sit plan including public spaces uses, parking structure/solution, height mass and number of units. At its joint meeting, Lafayette shall make preliminary comments regarding the potential preliminary approval or disapproval of the Project utilizing such procedures for recording comments of each body. (Project Preliminary Comments)	N/A	N/A	N/A

No.	Item	What Settlement Agreement Says	What LRP and KB Home's plans show	Staff Comments	LRP and KB Home Comments
13	What Heller Manus work product should achieve	Retain the general footprint, general elevations, general site plan and general plaza dimensions of the earlier proposal;	See notes in Item 3		See respones in Item 3
		Create a housing development that is economically viable from the standpoint of LRP; and	KB may argue that is needs buildings of this size, shape and scale for the project to be economically viable.		Geotechnical investigation was completed during the development of these plans. It was determined that no matter the size of the building, the building would need to be founded on piles. A piled foundation combined with dewatering efforts increased the cost of construction. The Developer has explored adding more units within the general footprint and height limitations; standardized floor plans which create building efficiencies; and implemented the ConXtech structural system to offset the increased cost of construction.
		Provide a feasible design for a naturally ventilated parking garage that meets City aesthetic requirements and that responds to the need to enliven the southern edge of the development all with access to or from Dewing/Mt. Diablo Blvd. Nothing herein contained shall be deemed to prohibit LRP from substituting a ventilated parking garage structure in the place of and stead of a proposed naturally ventilated parking garage as described herein above.	Feasible design has been provided		The developer has chosen to provide a mechanically ventilated parking garage.

CONTRA COSTA Co Recorder Office
STEPHEN L. WEIR, Clerk-Recorder
DOC- 2008-0175265-00
Check Number
Wednesday, AUG 06, 2008 14:21:45
FRE $0.00
Ttl Pd $0.00 Nbr-0004168160
mom/R3/1-16

16

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Lafayette
Attn: City Manager
3675 Mt. Diablo Blvd. #210
Lafayette, CA 94549-1968

[Fee Exempt - Gov't Code § 27383]
(Space above for Recorder's Use)

FOURTH AMENDMENT TO THE

TOWN CENTER

DEVELOPMENT AGREEMENT

[Assessor Parcel Numbers 243-040-034, 243-040-035, and 243-040-037]

between

THE CITY OF LAFAYETTE,
a California municipal corporation

and

CONSTANTINE AND JEANIE CHRISTOPOULOS,
husband and wife

and

LAFAYETTE RESIDENTIAL PARTNERS, LLC,
a Delaware limited liability company

and

BAY GLEN LIMITED PARTNERSHIP,
a California limited partnership

[Dated as of April 28, 2008 for reference purposes only]

MAR 12 2009

INDEXED

This Fourth Amendment to the Development Agreement ("Amendment") is dated as of April 28, 2008, for references purposes only and hereby entered into by and between the City of Lafayette, a municipal corporation ("City"), and Constantine Christopoulos and Jeanie Christopoulos, husband and wife as successors in interest to Lafayette Town Center Associates ("Retail Developer"), Lafayette Residential Partners, LLC, a Delaware limited liability company as successor in interest to Lafayette Town Center Associates, and Bay Glen Limited Partnership, a California limited partnership as successor in interest to Lafayette Town Center Associates (collectively, "Developer").

RECITALS

This Amendment is entered into with reference to the following facts:

A. The City of Lafayette ("City") and Lafayette Town Center Associates entered into that certain Development Agreement dated June 1, 1998 and effective as of May 27, 1998, Recorded Document Number 98-0153218-00 ("Development Agreement").

B. The Development Agreement provides for the development of certain property in the City as a mixed-used development comprised of three phased components, retail, apartment, and office.

C. Section 7.06 of the Development Agreement permits the Developer to assign an interest in the property subject to the Development Agreement upon receiving City consent unless the transfer is expressly exempt.

D. Lafayette Town Center Associates, after providing notice to the City, transferred its interest in the apartment and office component to Bay Glen Limited Partnership as an exempt transfer pursuant to Section 7.06(d) of the Development Agreement.

E. Bay Glen Limited Partnership, after providing notice to the City, transferred its interest in the office component to Lafayette Residential Partners, LLC as an exempt transfer pursuant to Section 7.06(d) of the Development Agreement.

F. The City, Christopoulos Properties, and C & H Development Co., as successors in interest to Lafayette Town Center Associates entered into an Assumption Agreement dated September 17, 1998, whereby City consented to the transfer of the retail parcel and Christopoulos Properties and C & H Development Co. assumed all of the duties and obligations of Lafayette Town Center Associates as those obligations relate to the retail parcel.

G. Christopoulos Properties and C & H Development Co., after providing notice to City, transferred is interest in the retail component to Constantine and Jeanie Christopoulos as an exempt transfer pursuant to Section 7.06(d) of the Development Agreement.

H. The Development Agreement was set to expire within seven years after the effective date of the Development Agreement.

I. The parties entered into a First Amendment to the Development Agreement dated September 13, 2004 to extend the term by one (1) year and extend the development timing for the Office Component by one (1) year ("First Amendment").

J. The parties entered into a Second Amendment to the Development Agreement dated May 22, 2006 to further extend the term by one (1) year and extend the development timing for the Office Component by one (1) year ("Second Amendment").

K. The parties entered into a Third Amendment to the Development Agreement dated April 23, 2007 to further extend the term by one (1) year and extend the development timing for the Office Component by one (1) year ("Third Amendment").

L. The parties desire to further amendment the Development Agreement to extend the term by two (2) years and include a Residential Component as an alternate to the Office Component with additional applicable fees and terms.

TERMS

Section 1. Effective Date. It is the intent of the parties that this Fourth Amendment shall become effective prior to the expiration of the Development Agreement.

Section 2. Recordation. The City, Developer, and Retail Developer hereby consent to the recordation of the Fourth Amendment in the Official Records of Contra Costa County, California, at any time following the effective date of the Fourth Amendment.

Section 3. Amendment of Section 3.02(d) of the Agreement. Section 3.02(d) of the Agreement is hereby amended to include the following:

> "The City and Developer agree that an alternative to the Office Component may include a residential project; a summary of the attributes of a residential project the parties jointly find to be an acceptable use:
>
> i. The architectural firm Heller-Manus has previously conducted conceptual studies of the Phase III project site for development of a residential project. Developer shall retain Heller-Manus to produce plans acceptable to it intended to create an economically viable development project; provided, however, the general foot print, general elevations, general site plan and general plaza dimensions of the original Heller-Manus work product attached hereto as Attachment 1 shall be retained. (The

parties acknowledge that the foregoing does not directly address building height; the height limitations applicable to the project shall be as defined in Section 3.03.)

ii. There shall be no restaurant use requirement imposed by the City as to the project, provided that an acceptable open space substitute (e.g., enlarged plaza, children's fountain/playground/spray ground, sculpture park) or, alternatively, a public or quasi-public interior space substitute (e.g., art gallery, chamber of commerce office, non-profit foundation) is proposed that meets City parking requirements. In addition, there shall be no requirement for live/work units, provided that an acceptable alternative is proposed that enlivens the southern edge of the development that meets City aesthetic requirements. Developer shall apply for a Land Use Permit to define the specific acceptable open space substitute or public or quasi public interior space substitute for the prior required restaurant use. The issuance of a Land Use Permit shall be a condition precedent to use of the referenced space—but not to approval of the Project itself.

iii. Exterior finishes and materials used on the buildings, the plaza, and the pedestrian pathway and the proposed landscaping shall be of the highest quality, shall respect and reflect the creek side setting of the project, and be commensurate with the single family and environmentally-sensitive quality of residential buildings in the City. The City will require the extensive use of architectural features involving a variety of building materials including stone, brick, minimal use of smooth trowelled stucco, and wood for the exterior of the buildings. Other materials and finishes that are consistent with a high quality residential project may be offered by Developer as alternatives. Approval of such materials is at the discretion of the City.

iv. All matters involving non-public spaces and portions of the project and/or individual units which are not viewable from off-site shall be matters determined by Developer at its sole and exclusive discretion. (The foregoing specifically includes all interior finishes, fixtures and amenities of every kind and sort.)

v. Parking requirements shall not exceed two spaces per unit and shall be otherwise limited to one space per bedroom. Parking requirements may be satisfied by tandem spaces and/or "lifts"; provided, however, such alternatives must be reviewed and approved by a qualified traffic engineer and the City's engineer to ensure feasibility. Developer shall provide parking as set forth above and shall also include replacement parking for any spaces

lost in the retail parking lot in addition to required spaces pursuant to prior agreements (e.g. CC&Rs, Development Agreement etc)."

Section 4. Amendment of Section 3.03 of the Agreement. Section 3.03 of the Agreement is hereby amended to include the following:

"In the event the Developer pursues the residential project alternative as provided for in Section 3.02(d), Lafayette's building ordinances in existence as of February 25, 2008 shall be applicable. The parties acknowledge that a Specific Plan Amendment to the BART Block Specific Plan shall be required to develop a residential project alternative. Developer shall file an application for amendment of the BART Block Specific Plan and Lafayette shall thereafter process the same as necessary to accommodate the planned residential development so long as the potential preliminary approval of said project is indicated following the joint meeting of the Council and subsidiary commissions all as set forth hereafter. The amendment of the Specific Plan shall be with respect to permissible building height. In no case shall the height of the buildings exceed the height of the existing Residential and Retail Components. (For purposes of this paragraph, the height limitation imposed by the existing Phase II project shall be determined by project height above sea level rather than existing grade.)"

Section 5. Amendment of Section 3.07 of the Agreement. Section 3.07 of the Agreement is hereby amended in its entirety to read as follows:

"3.07 Development Timing. Developer may phase the construction of the apartment and office Components and Retail Developer may phase the construction of the retail Component, but only to the extent that it complies with the following schedule: building permits for the retail Component shall be obtained within two (2) years of the Effective Date of this Agreement except for Building A; building permits for the apartment Component shall be obtained within three (3) years of the Effective Date of this Agreement; building permits for the office Component or alternate to the office Component as defined in Section 3.02(d) shall be obtained within twelve (12) years of the Effective Date of this Agreement, all as provided for in G-3 of the Conditions of Approval. Developer and Retail Developer understand that City cannot issue building permits for a particular Component until City has approved a Final Development Plan for that Component. The occurrence of any event specified in G-27 of the Conditions of Approval shall extend these time periods.

Within these limits, Developer and Retail Developer may develop the Components in other than the order of retail first, then residential, then office. However, in this event the City has the authority and may impose conditions which may alter the timing of Developer's obligations to install improvements both within and outside of the Property, reasonably justified by the alteration of the order in which the phases are initiated. However, in any event the following improvements must be completed before issuance of occupancy permits for the first phase initiated by Developer or Retail Developer:

1. Installation of the signal at Mt. Diablo Boulevard and Lafayette Circle, and associated median improvements; and

2. Repair of the culvert at the southern end of the creek, installation of a new headwall, and cleaning the creek of debris and dead vegetation.

After obtaining a building permit for each Component, Developer and Retail Developer shall proceed diligently to complete construction."

Section 6. Amendment of Section 3.09 of the Agreement. Section 3.09 of the Agreement is hereby amended to include the following:

"In the event the Developer elects to pursue the residential project alternative as listed in Section 3.02(d), the fees payable to the City as otherwise required there under shall be payable at the rate in existence at the time a project application is actually filed. The City may charge the following specific fees, which shall be paid concurrently with the issuance of building permits, in the event the Developer pursues a residential project alternative as listed in Section 3.02(d):

(a) Such "art fee" as Lafayette may impose as of February 25, 2008, the date of the Amended and Restated Settlement Agreement between the City and Lafayette Residential Partners ("LRP") on projects of the sort and scale of proposed residential development on the Phase III Site;

(b) A contribution to off-site improvements ear marked for the BART pathway/project intersection in a sum not to exceed $100,000; provided, however, any monies so paid shall in fact be allocated to and expended for such purpose in accordance with plans and specifications reasonably approved by Developer. Additionally, the City shall make good faith application for grant monies with which to complete the subject off-site improvements

and any monies obtained in such fashion shall reduce Developer's contribution in an amount equal to five (5) percent of the total grant amount. Developer shall not receive any monies in excess of its contribution, in the event five (5) percent of the total grant amount exceeds Developer's contribution.

(c) A contribution in a sum not to exceed $50,000 for a traffic signal at the intersection of Dewing and Mt. Diablo Blvd. (The amount of contribution, if any, shall be based strictly on the incremental increase of traffic, if any, generated by the proposed residential project alternative over that related to the office component.)

(d) The parties acknowledge that the City may consider fees or exactions in addition to those listed in this Section), revised plans, or other measures not specified in this Agreement that are designed to mitigate an environmental impact, as determined by the CEQA process, and those measures shall not be considered to violate this Agreement.

The foregoing specific fee provisions shall have no application in the event Developer elects to construct its approved office project.."

Section 7. Amendment of Section 3.15 of the Agreement. Section 3.15 of the Agreement is hereby amended to include the following:

The following affordable housing requirements shall be imposed as to the residential project alternative as listed in Section 3.02(d). Developer may provide affordable housing either on site or off site. California Redevelopment Law imposes a 15% affordable housing requirement of which 6% of units are to be allocated for very low income households and 9% of units allocated to low or moderate income households. (The aforesaid state law also imposes certain requirements regarding affordable units for qualified households at very low income, low or moderate income for not less than 55 years for rental units and 45 years for owner-occupied units.) The Developer may elect to meet affordable housing requirements through the provision of off-site units and, in such case, the requirement shall be 15% of the aggregate number of units constructed as required by California Redevelopment Law with 6% thereof allocated to very low and 9% to moderate income units. The election to provide affordable housing either on site or off site shall be that of the Developer with requirements imposed on said election to be made as herein set forth. (Affordable units shall be provided in configurations of one bedroom or two-

bedroom units in the same proportion as market rate units comprising the Project.)

Should Developer propose to provide affordable housing on site, requirements related to the number and type of affordable units shall be calculated in a fashion which includes the affordable housing units presently in place at the Phase II Residential Rental Project.

The Apartment Component currently has in place 15 very low income units. That allocation of affordable units exceeds the requirement for very low income households by 10 units and exceeds the overall affordability requirement by 3 units. If it is assumed that the Alternative to the Office Component will consist of 75 units, then the aggregate affordable unit requirement for the Apartment Component and the Alternative to the Office Component (comprising 150 units) would be 23. Since the very low income household unit requirement for the Apartment Component already exceeds the entire very low income requirement for Phases II and III together, there shall be no requirement for additional very low income household units. In order to satisfy affordability requirements based on a combined 150 unit count between the Apartment Component and the Alternative to the Office Component, the remaining shortfall in affordable units (8) shall be constructed as a part of Alternative to the Office Component and shall be allocated to moderate income households. (The foregoing calculation is illustrative only as the number of units comprising the Alternative to the Office Component alternative has yet to be determined. Therefore, affordability requirements shall be calculated with respect the aggregate number of units comprising both the Apartment Component and Alternative to the Office Component with credit given for excess Apartment Component units against requirements otherwise applicable to the Alternative to the Office Component.)

In the event Developer elects to provide affordable housing off site, then the 15% affordable housing requirement of California Redevelopment Law shall apply and the Developer shall provide 6% of the units for very low income households and 9% of the units for low or moderate income households.) (By way of example, should the project be composed of 80 units, affordable housing requirements shall be satisfied by means of a credit of four (4) very low units; the provision of four (4) very low units and the provision of four (4) moderate for a total of eight (8) new affordable units.)

The terms "very low income households" "low" and "moderate income" shall have the same meanings as set forth in California Health Safety Code and Section 50052.5 as that section may be amended from time to time and shall provide an allowance for utilities and maintenance costs established by the State of California Department of House and Community Development, plus the actual homeowners association fees, dues and assessments as established from time to time. "Area median income" as referenced in California Health and Safety Code Section 50052.5 shall mean the area median income for Contra Costa County, California. as permissibly adjusted for family size appropriate for the unit by the State of California Department of Housing and Community Development in accordance with adjustment factors adopted and amended from time to time by the US Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937 and California Health and Safety Code Section 50093."

Section 8. Amendment of Section 7.04 of the Agreement. Section 7.04 of the Agreement is hereby amended in its entirety to read as follows:

"7.04 Term. The term of this Agreement begins upon the Effective Date and shall extend until the earlier of: (1) the expiration of twelve (12) months from the issuance of the final certificate of occupancy for the last Component of the Project to be undertaken or (2) twelve (12) years after the effective date of this Agreement, if no building permit is obtained for the Office Component or the Alternative to the Office Component as defined in Section 3.02(d) or (3) if a building permit is obtained for the Office Component or Alternative to the Office Component, but the permits expires or is abandoned prior to the commencement of the construction, upon the date such permit expires or is abandoned. The expiration of this Agreement does not affect the continued existence of the documents recorded pursuant to this Agreement or the DDA, CCRs (Exhibit 5) or the Affordability Covenants set forth in the DDA. The expiration of these documents is governed by their own provisions."

Section 9. Counterparts. This Fourth Amendment may be executed in quadruplicate originals, each of which is deemed to be an original, but when taken together shall constitute but one and the same instrument.

Section 10. No Other Amendments. Except as set forth in this Fourth Amendment, the Third Amendment, Second Amendment, First Amendment, and the Agreement remains in full force and effect according to its terms.

Section 11. Incorporation of Amendment. From and after the effective date of this

Fourth Amendment, wherever the term "Agreement" appears in the Agreement, it shall be read and understood to mean the Agreement as amended by the First Amendment, Second Amendment, Third Amendment, and Fourth Amendment.

Section 12. Entire Agreement. This Fourth Amendment, Third Amendment, Second Amendment, and First Amendment, together with the Agreement, constitutes the entire understanding and agreement of the City, Developer and Retail Developer with respect to the subject matter set forth herein and therein, integrates all of the terms and conditions mentioned herein and therein, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof or thereof.

Section 13. Defined Terms. All initially capitalized terms used, but not otherwise defined, herein shall have the meanings ascribed to such terms in the Agreement.

Section 14. Severability. If any provisions of this Fourth Amendment shall be deemed to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired hereby.

IN WITNESS WHEREOF, the parties hereto have executed this Fourth Amendment on the date and year first-above written.

[Signatures on the following pages]

CITY:

CITY OF LAFAYETTE

Mike Anderson, Mayor

ATTEST:

Joanne Robbins, City Clerk

APPROVED AS TO FORM:

Malathy Subramanian, City Attorney

DEVELOPER:

LAFAYETTE RESIDENTIAL PARTNERS, LLC,
a Delaware limited liability company

By: _____
Richard J. Dishnica, Member

By: _____
Ivan M. Glover, Member

BAY GLEN LIMITED PARTNERSHIP
a California limited partnership

By: PARK PLACE VENTURES, LLC,
a California limited liability company
Its: General Partner

By: _____
Richard J. Dishnica, President

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Contra Costa } ss.

On 6-8-08 (Date), before me, W. M. Ferguson (Name and Title of Officer (e.g., "Jane Doe, Notary Public")),

personally appeared Richard T. Dishica, Ivan M. Glover (Name(s) of Signer(s)),

☒ personally known to me
☐ proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

W. M. FERGUSON
COMM. #1753590
NOTARY PUBLIC • CALIFORNIA
CONTRA COSTA COUNTY
Comm. Exp. JUNE 26, 2011

Place Notary Seal Above

W. M. Ferguson
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: 4th Amendment to the Town Ctr. Dev. Agmt

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: None

Capacity(ies) Claimed by Signer

Signer's Name: _____

☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☒ Other: Members

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

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RETAIL DEVELOPER:

CONSTANTINE CHRISTOPOULOS,
husband and wife

By:

JEANIE CHRISTOPOULOS,
husband and wife

By: Jeanie Christopoulos

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Contra Costa

On 7-14-08 (DATE) before me, Robin A. Rahkonen (NAME, TITLE OF OFFICER), Notary Public

personally appeared Constantine Christopoulos, Jeanie Christopoulos (NAME(S) OF SIGNER(S))

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that ~~he/she~~/they executed the same in ~~his/her~~/their authorized capacity(ies), and that by ~~his/her~~/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing is true and correct.

WITNESS my hand and official seal.

Robin A. Rahkonen
SIGNATURE OF NOTARY

ROBIN A. RAHKONEN
Commission # 1665153
Notary Public - California
Contra Costa County
My Comm. Expires May 8, 2010

This area for notarial seal

ATTACHMENT 1

ORIGINAL HELLER MANUS PLANS

PLANS ON FILE AT THE CITY OF LAFAYETTE

3675 Mt. Diablo Blvd.
Lafayette, CA 94549

END OF DOCUMENT